

ORIGINAL

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CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY: *PPC* DEPUTY

Attorneys for Plaintiffs CarMax Auto
 Superstores, California, LLC, and
 CarMax Business Services, LLC

**UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA –
 SOUTHERN DIVISION**

CARMAX AUTO SUPERSTORES,
 CALIFORNIA, LLC, a California
 limited liability company, and
 CARMAX BUSINESS SERVICES,
 LLC, a Delaware limited liability
 company,

) Case No.

'08 CV 0245 LAB POR

) COMPLAINT FOR DAMAGES:

-) 1. TRADE DRESS
) INFRINGEMENT; AND
) 2. UNFAIR COMPETITION

Plaintiffs,

v.

) DEMAND FOR TRIAL BY JURY

SS & KH CORPORATION, a
 California corporation d/b/a SAN
 DIEGO AUTO FINDER, SIAMAK
 SALAMI, AND HOSSEINI SALAMI,

Defendants.

1 **COMPLAINT**

2

3 Plaintiffs CarMax Auto Superstores, California, LLC ("CarMax") and
4 CarMax Business Services, LLC ("CBS LLC") (collectively "Plaintiffs"), by
5 counsel, hereby file their Complaint against Defendants SS & KH Corporation,
6 d/b/a San Diego Auto Finder ("Auto Finder"), Siamak Salami, and Hosseini
7 Salami (collectively "Defendants"). Plaintiffs respectfully allege as follows:

8

9 **SUBJECT MATTER JURISDICTION**

10

11 1. This is an action for trade dress infringement and unfair competition
12 arising under the Lanham Act, 15 U.S.C. §§ 1051 et seq., the laws of the state of
13 California, and the common law.

14 2. This Court has original jurisdiction over this civil action pursuant to
15 28 U.S.C. § 1338(a) because the action arises under an Act of Congress relating to
16 trademarks. This Court has original jurisdiction over this civil action pursuant to
17 28 U.S.C. § 1338(b) because the action asserts a claim of unfair competition
18 joined with a substantial and related claim under the trademark laws. This Court
19 has original jurisdiction over this civil action pursuant to 15 U.S.C. § 1121
20 because the action arises under 15 U.S.C. ch. 22. This Court has original
21 jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 because the action
22 arises under the laws of the United States. This Court has supplemental
23 jurisdiction pursuant to 28 U.S.C. § 1367 over all state law and common law
24 claims in this civil action because the state law or common law claims are so
25 related to claims over which this court has original jurisdiction that the state law
26 and common law claims form part of the same case or controversy under Article
27 III of the United States Constitution.

28

1 **PERSONAL JURISDICTION**

2
3 3. Personal jurisdiction over Defendants is proper because Defendants
4 regularly conduct business in this judicial district as set forth below.
5

6 **VENUE**

7
8 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because
9 Defendants' principal place of business is within this judicial district, Defendants
10 conduct substantial business activities within this district, and the acts complained
11 of were committed by Defendants in this district.
12

13 **PARTIES**

14
15 5. Plaintiff CarMax Auto Superstores California, LLC is a California
16 limited liability company with its principal place of business at 12800 Tuckahoe
17 Creek Parkway, Richmond, Virginia, 23238. At all times relevant to this
18 complaint, CarMax Auto Superstores California, LLC was present and doing
19 business within this judicial district.

20 6. Plaintiff CarMax Business Services, LLC ("CBS LLC") is a Delaware
21 limited liability company, with its principal place of business at 12800 Tuckahoe
22 Creek Parkway, Richmond, Virginia, 23238. At all times relevant to this
23 complaint, CarMax Business Services, LLC was present and doing business within
24 this judicial district.

25 7. On information and belief, Defendant Auto Finder is organized under
26 the laws of the state of California with its principal place of business at 4606
27 Convoy Street, San Diego, California, 92111. A true and correct copy of the
28 Defendants' business information is attached hereto as Exhibit 1 and is

1 incorporated herein by this reference. On information and belief, Defendant is a
2 full service used-car dealership that transacts business under the name "San Diego
3 Auto Finder."

4 8. On information and belief, Defendant Siamak Salami ("Siamak") is a
5 natural person present and doing business in this judicial district. On information
6 and belief, Defendant Siamak is President of Defendant Auto Finder. Exhibit 1.

7 9. On information and belief, Defendant Hosseini Salami ("Hosseini") is
8 a natural person present and doing business in this judicial district. On
9 information and belief, Defendant Hosseini is Chairman of the Board of Auto
10 Finder. Exhibit 1.

11 10. Plaintiffs are informed and believe and thereon allege that each
12 Defendant was and is an agent, employee, officer, partner, owner, successor in
13 interest or transferee of each of the remaining Defendants and was at all times
14 described herein acting within the purpose and scope of such capacity with the
15 actual and/or implied knowledge, permission and/or consent of each of them, and
16 that each Defendant approved and ratified the wrongful conduct of such Defendant
17 who engaged in said conduct.

18 11. Plaintiffs are informed and believe and allege thereon that defendants
19 SS & KH Corporation, d/b/a San Diego Auto Finder, Siamak Salami and Hosseini
20 Salami are of such unity and ownership between and amongst themselves such
21 that any individuality or separateness between said defendants is a mere shell and
22 sham, without capital, assets, equity, membership, stock, or stockholders and is
23 used as a device to avoid individual liability and for the purpose of substituting
24 financially insolvent business entities in the place of defendants. Adherence to the
25 fiction of the separate existence of the various defendants as entities distinct from
26 one another would permit an abuse of the corporate privilege and would promote
27 injustice by permitting defendants to escape liability to their creditors.
28

1 12. Plaintiffs are informed and believe and thereon allege that each and
2 every Defendant, and all of them, are responsible in some manner or capacity for
3 the injuries suffered by Plaintiffs, and that Plaintiffs' damages herein were
4 proximately caused by said Defendants, and each of them.

5
6 **FACTS APPLICABLE TO ALL CLAIMS**
7

8 13. CarMax, including its affiliates and subsidiaries, is the nation's
9 leading specialty retailer of used cars, operating eighty-six automobile superstores
10 throughout the United States. In particular, CarMax operates eleven auto
11 superstores in the state of California.

12 14. CarMax also operates six new car franchises which are integrated or
13 co-located with its used car superstores, including one in California.

14 15. CarMax operates numerous repair shops throughout the United
15 States, which are co-located with its used car superstores, including eight in
16 California.

17 16. Through these superstores, CarMax offers the sale and lease of new
18 and used vehicles, repair and maintenance services pertaining to vehicles,
19 warranty services pertaining to vehicles, and other vehicle-related goods and
20 services.

21 17. The products marketed by CarMax are distributed throughout the
22 United States through the stream of interstate commerce.

23 18. CBS LLC owns the intellectual property for CarMax, including the
24 rights to various CARMAX marks that have been in continuous use since 1993 in
25 connection with the goods and services provided by CarMax.

26 19. CBS LLC is the title owner of U.S. Service Mark Registration No.
27 1,941,353, which is incontestable, for the mark CARMAX for use in connection
28 with "retail outlets featuring automobiles and trucks." A true and correct copy of

1 the service mark registration for the mark CARMAX is attached hereto as Exhibit
2 2 and is incorporated herein by this reference.

3 20. CBS LLC is the title owner of more than twenty-five additional
4 federally registered marks in the CarMax family of marks, each of which contains
5 the word CARMAX and is used for services related to the sale and lease of new
6 and used vehicles, repair and maintenance services pertaining to vehicles,
7 warranty services pertaining to vehicles, and other related goods and services. A
8 true and correct copy of the service mark registrations for the additional marks
9 containing the word CARMAX is attached hereto as Exhibit 3 and is incorporated
10 herein by this reference.

11 21. CarMax Auto Superstores California, LLC is one of the licensees of
12 the CarMax marks.

13 22. The various CARMAX marks have been used in television and radio
14 commercials, in print advertisements, on the Internet, and in numerous signs,
15 banners, and promotional materials at CarMax locations.

16 23. In addition, CarMax has used its trade dress since 1993 in connection
17 with its goods and services. CarMax's trade dress includes, but is not limited to, a
18 blue, white, and yellow color scheme for its marks; for example, the prefix CAR
19 often appears in yellow and the stem MAX in white, both superimposed on a blue
20 background, with yellow dashes under the MAX stem. A true and correct copy of
21 a photograph exhibiting this is attached hereto as Exhibit 4 and is incorporated
22 herein by this reference. CBS LLC is the title owner of a federal registration that
23 includes this trade dress, U.S. Service Mark Registration No. 1,959,875, for the
24 color design of the CarMax logo. A true and correct copy of the service mark
25 registration for CarMax's trade dress is attached hereto as Exhibit 5 and is
26 incorporated herein by this reference. CarMax has also used a variation of this
27 scheme whereby the same colors are used in different places.

28

1 24. CarMax's trade dress further includes various aspects of its physical
2 locations, including but not limited to use of the registered blue, yellow, and white
3 CARMAX mark and trade dress, blue pyramidal roofs, and square yellow light
4 fixtures in the parking lot, and other variations thereof. A true and correct copy of
5 a photograph of the CarMax location in San Diego across the street from
6 Defendants is attached hereto as Exhibit 6 and is incorporated herein by this
7 reference.

8 25. Like the CARMAX marks, the CarMax trade dress has been used in
9 television and radio commercials, in print advertisements, on the Internet, and in
10 numerous signs, banners, and promotional materials at CarMax locations.

11 26. CarMax has invested great time, effort, and resources in the
12 development of a distinctive and well known series of trademarks, service marks,
13 and trade dress—all associated with a reputation for quality used cars at a “no
14 haggle” price—such that its unique goods and services have become widely
15 recognized as emanating from CarMax and as maintaining only the highest quality
16 standards.

17 27. CarMax uses and displays these marks and trade dress at its San
18 Diego area and other California locations.

19 28. In its operation of Auto Finder, Defendants are selling automobile
20 goods and services that are virtually identical to those of CarMax.

21 29. Defendants are selling automobile goods and services under the
22 CarMax trade dress. Specifically, one sign on Defendants' building contains a
23 mark which includes the name SAN DIEGO AUTO FINDER, with SAN DIEGO
24 in yellow, AUTO FINDER in white, yellow dashes under the AUTOFINDER
25 stem, all on a blue background. A true and correct copy of a photograph
26 exhibiting this is attached hereto as Exhibit 7 and is incorporated herein by this
27 reference. Another sign on Defendants' building features the name FREE
28 CARFAX SAN DIEGO AUTO FINDER SUPERSTORE, with FREE in white

1 CAR in yellow, FAX in white, SAN DIEGO AUTO FINDER in yellow, and
2 SUPERSTORE IN WHITE, all on a blue background. A true and correct copy of
3 a photograph exhibiting this is attached hereto as Exhibit 7 and is incorporated
4 herein by this reference. A third sign on Defendants' property includes the text
5 SAN DIEGO AUTO FINDER, with SAN DIEGO in yellow, AUTO FINDER in
6 white, yellow dashes under FINDER, all on a blue background. A true and correct
7 copy of a photograph exhibiting this is attached hereto as Exhibit 8 and is
8 incorporated herein by this reference. Defendants also use square yellow light
9 fixtures in the parking lot of their location, and various blue and yellow banners,
10 and alternating blue and yellow posts on the perimeter of the property. A true and
11 correct copy of a photograph exhibiting this is attached hereto as Exhibit 8 and 9
12 and is incorporated herein by this reference. These uses misappropriate the
13 CarMax trade dress.

14 30. On information and belief, Carfax did not provide Defendants with
15 the FREE CARFAX SAN DIEGO AUTO FINDER SUPERSTORES sign on
16 Defendants' building.

17 31. Defendants' property is located across the street from the CarMax
18 location in San Diego, which displays the CARMAX marks and CarMax trade
19 dress. A true and correct copy of a photograph exhibiting this is attached hereto as
20 Exhibit 10 and is incorporated herein by this reference.

21 32. Defendants' adoption of the CarMax trade dress is intentional,
22 willful, and deliberate.

23 33. Prior to the construction of the CarMax location, Defendants' sign for
24 SAN DEIGO AUTO FINDER consisted of red lettering on a white background.
25 Defendants did not adopt the CarMax trade dress until after the construction of the
26 CarMax sign, lot, and building bearing that trade dress across the street. A true
27 and correct copy of a photograph exhibiting this is attached hereto as Exhibit 11
28 and is incorporated herein by this reference.

1 34. On information and belief, Defendants installed the square yellow
2 light fixtures at their location after the construction of the CarMax trade dress
3 across the street. A true and correct copy of a photograph exhibiting this is
4 attached hereto as Exhibit 11 and is incorporated herein by this reference.

5 35. On information and belief, Defendants did not use the CarMax trade
6 dress until the construction of the CarMax location across the street. Exhibit 11.

7 36. This use of the CarMax trade dress is identical to or confusingly
8 similar to CarMax's uses of the CARMAX family of marks and the CarMax trade
9 dress.

10 37. Defendants do not have license or permission from CarMax to use the
11 CARMAX marks or the CarMax trade dress.

12 38. There is a substantial likelihood that consumers will be confused as to
13 the source of the goods and services that Defendants market under the AUTO
14 FINDER mark and Defendants' trade dress.

15 39. Further, there is a substantial likelihood that consumers will purchase
16 Defendants' goods or services believing that they are CarMax's goods or services.

17 40. Defendants' use of the AUTO FINDER mark in combination with the
18 CarMax trade dress increases the likelihood of confusion that customers will
19 confuse Defendants' goods and services for those of CarMax.

20 41. Defendants' conduct has caused numerous instances of actual
21 confusion among customers.

22 42. On learning that Defendants were using a mark and trade dress
23 confusingly similar and virtually identical to the CARMAX marks and CarMax
24 trade dress, CarMax sent Defendants a letter, by Federal Express, to put
25 Defendants on notice of its infringing behavior and to demand that it cease. A true
26 and correct copy of the letter from Henry D.W. Burt, II, Esq., Corporate Counsel
27 to CarMax, to Siamak Salami, President and Registered Agent of SS & KH
28 Corporation (October 8, 2007) is attached hereto as Exhibit 12 and is incorporated

1 herein by this reference. Defendant responded by letter but did not agree to
2 remove any of the CarMax trade dress. A true and correct copy of the letter from
3 Kenneth J. Jorgensen, General Manager, San Diego Auto finder, to Henry D.W.
4 Burt, II. Esq. (October 11, 2007) is attached hereto as Exhibit 13 and is
5 incorporated herein by this reference.

6 42. On information and belief, Defendants' assertion in their letter that
7 they "have used the yellow and blue colors for many years" is false.

8 43. As a result of Defendants' failure to cease use of CarMax's federally
9 registered trade dress, CarMax was forced to file the instant suit.

10 **FIRST CLAIM**
11 **FOR TRADE DRESS INFRINGEMENT**
12 **(AGAINST ALL DEFENDANTS)**

13
14 44. Plaintiffs repeat and reallege, as if fully set forth herein, each and
15 every allegation contained in the foregoing paragraphs.

16 45. This claim arises under 15 U.S.C. § 1125(a) for willful and deliberate
17 infringement of CARMAX's trade dress.

18 46. This claim also arises under California state law and common law for
19 willful and deliberate infringement of the CARMAX trade dress.

20 47. CarMax has used its trade dress continuously and in good faith, in
21 connection with the sale and lease of new and used vehicles, with repair and
22 maintenance services pertaining to vehicles, with warranty services pertaining to
23 vehicles, and with other related goods and services, since 1993, well prior to
24 Defendants' adoption of that same trade dress in connection with those same
25 goods and services.

26 48. Evidence of CarMax's trade dress can be found in Registration No.
27 1,959,875 for the color design of the CarMax logo. CarMax's trade dress further
28 includes, but is not limited to, the appearance of its physical locations, including

1 various uses of the blue, yellow, and white color scheme, and square yellow light
2 fixtures.

3 49. The CarMax trade dress is nonfunctional, inherently distinctive, and
4 has acquired secondary meaning. The public associates the CarMax trade dress
5 with CarMax's goods and services.

6 50. Defendants are using the CarMax trade dress in connection with
7 goods and services that are similar to, or nearly identical to, those offered by
8 CarMax in connection with its trade dress.

9 51. Defendants' use of the CarMax trade dress creates a likelihood of
10 confusion, mistake, or deception among consumers, between Defendant's goods
11 and services and those offered by CarMax under its trade dress.

12 52. Defendants' use of the CarMax trade dress has created numerous
13 instances of actual confusion among consumers.

14 53. Defendants knew, or should have known by the exercise of
15 reasonable care, that use of the CarMax trade dress in connection with the sale and
16 lease of new and used vehicles, with warranty services pertaining to vehicles, and
17 with other related goods and services, would cause confusion, mistake, or
18 deception among purchasers of automobiles and automobile-related goods and
19 services, as well as the general public.

20 54. Defendants knew of CarMax's prior use of its trade dress, and
21 intended to induce and did induce, and intends to induce and will induce
22 consumers to purchase Defendants' goods and services by trading off the
23 extensive goodwill built up by CarMax in its trade dress.

24 55. Defendants' use of the CarMax trade dress in numerous locations on
25 its property, in conjunction with the fact that Defendants adopted this trade dress
26 after the construction of the CarMax location across the street, demonstrates that
27 Defendants' infringement is intentional, deliberate, and willful.

28

1 56. To date, Defendants have not ceased use of the CarMax trade dress,
2 in violation of CarMax's legitimate and conclusive rights to the exclusive use of
3 the CarMax trade dress.

4 57. Defendants' wrongful acts alleged herein violate CarMax's rights
5 under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and, on information
6 and belief, have been deliberate, willful, and in disregard of CarMax's rights.

7 58. Defendants' wrongful acts alleged herein violate CarMax's rights
8 protected by the laws of the state of California and the common law.

9 59. Defendants' wrongful acts alleged herein have permitted or will
10 permit Defendant to earn substantial revenues and profits on the strength of
11 CarMax's extensive advertising, consumer recognition, and goodwill.

12 60. By reason of Defendants' wrongful acts alleged herein, CarMax has
13 suffered and is continuing to suffer damage to its business, trade, reputation, and
14 goodwill as a result of the erroneous perception that the goods and services of
15 Defendants are affiliated with, sponsored by, approved by, or originate from
16 CarMax.

17 61. As a result of Defendants' wrongful acts alleged herein, CarMax has
18 suffered and is continuing to suffer irreparable injury. CarMax cannot be
19 adequately compensated for these injuries by damages alone, and CarMax has no
20 adequate remedy at law for Defendants' infringement of its rights. CarMax is
21 entitled to injunctive relief, as well as attorneys' fees.

22
23 **SECOND CLAIM**
24 **FOR UNFAIR COMPETITION**
25 **(AGAINST ALL DEFENDANTS)**

26
27 62. Plaintiffs repeat and reallege, as if fully set forth herein, each and
28 every allegation contained in the foregoing paragraphs.

1 63. This claim arises under 15 U.S.C. § 1125(a) for willful and deliberate
2 unfair competition, including false designation of origin and palming off. This
3 claim also arises under the laws of the state of California, including Cal. Bus. &
4 Prof. Code Section 17200, and the common law.

5 64. Having constructive, if not actual, knowledge of the prior use of the
6 CarMax trade dress, Defendants continue to use the CarMax trade dress in
7 interstate commerce in connection with goods and services that are similar and
8 related to those offered by CarMax, which tends to falsely describe and represent a
9 false designation of origin with CarMax, and which tends to palm off Defendants'
10 goods and services as affiliated with, sponsored by, approved by, or originating
11 from CarMax.

12 65. The CarMax trade dress is valid and enforceable, and has attained
13 secondary meaning such that consumers identify it as originating from Plaintiffs.

14 66. Defendants' use of the CarMax trade dress creates a likelihood of
15 confusion in the minds of consumers with Plaintiffs' trade dress.

16 67. Defendants' use of the CarMax trade dress has created actual
17 confusion among consumers.

18 68. Defendants' use of the CarMax trade dress constitutes an unlawful,
19 unfair, or fraudulent business practice, and/or unfair, deceptive, untrue, and
20 misleading advertising under Cal. Bus. & Prof. Code § 17200.

21 69. Defendants' wrongful acts alleged herein constitute unfair
22 competition under federal law, the law of the state of California, and common law,
23 and CarMax has been and will continue to be damaged by such unfair competition,
24 suffering damage to its business, trade, reputation, and good will.

25 70. Defendants' use of the CarMax trade dress, and its adoption of that
26 trade dress after the appearance of the CarMax location across the street,
27 demonstrates Defendants' willful and deliberate intent to trade off the goodwill
28

1 that CarMax has established in the use of its trade dress in connection with its
2 goods and services.

3 71. The goodwill of CarMax's business is of enormous value, and
4 CarMax will suffer irreparable harm should Defendants' unfair competition be
5 allowed to continue to the detriment of CarMax's business, trade, reputation, and
6 goodwill.

7 72. Defendants' unfair competition, false designation of origin, and
8 palming off, on information and belief, have been willful, deliberate, and
9 intentional, and will no doubt continue unless enjoined by this Court.

10 **PRAYER FOR RELIEF**

11
12 Wherefore, Plaintiffs pray that the Court award the following relief:

- 13 1. A temporary restraining order and a permanent injunction against
14 Defendants as follows:
- 15 (i) Enjoining Defendants from further commercial use of the
16 CARMAX trade dress, either alone or in combination with
17 other words, names, or symbols; on or in connection with the
18 sale, offer for sale, advertising, and rendering of transportation
19 services or any other related services;
 - 20 (ii) Enjoining Defendants from performing or committing any
21 other acts falsely representing Defendants' goods or services,
22 or which are likely to cause confusion or mistake in the mind of
23 the purchasing public, or lead to purchasers or the trade to
24 believe that Defendants' services or products come from or are
25 the services or products of CarMax, or are somehow sponsored
26 by, associated with, affiliated with, or connected with CarMax,
- 27
28

- 1 or that there is some relation, association, affiliation, or
2 connection between CarMax and the Defendants;
- 3 (iii) Enjoining Defendants from passing off, or inducing or enabling
4 others to sell or pass off, Defendants' services or products as
5 those of CarMax;
- 6 (iv) Enjoining Defendants from otherwise unfairly competing with
7 CarMax, and from any other acts which discourage, dilute, or
8 destroy the public's recognition of the CARMAX marks and
9 trade dress for CarMax's goods and services; and
- 10 (v) Enjoining Defendants to remove all signage, markings, or
11 advertising bearing the CARMAX mark or trade dress, or any
12 name, mark, or trade dress that is substantially or confusingly
13 similar to that owned or registered by CarMax, from the 4606
14 Convoy Street, San Diego, California, 92111 property;
- 15 2. Issuance of a Writ to the United States Marshall that directs the
16 Marshall to seize and impound all of Defendants' advertising
17 materials used to infringe the CARMAX trade dress, and that all of
18 these items be destroyed;
- 19 3. An order from this court, upon final judgment in favor of Plaintiffs,
20 that Defendants' acts be deemed willful and intentional;
- 21 4. An award actual, statutory, multiple, and/or punitive damages, plus
22 interest, and an accounting of and disgorgement of Defendants'
23 profits, in an amount to be determined at trial;
- 24 5. An order from this Court, upon final judgment in favor of Plaintiffs,
25 that Defendants be required to account to Plaintiffs for its profits and
26 the damages suffered by CarMax as a result of the Defendants'
27 wrongful acts alleged herein;
- 28 6. Attorney's fees and costs as allowed by statute; AND

- Dated: February 6, 2008**

Steve Shonack

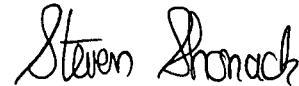
**By: KURT A. SCHLICHTER
STEVEN C. SHONACK**
**Attorneys for Plaintiffs CarMax Auto
Superstores, California, LLC, and
CarMax Business Services, LLC**

DEMAND FOR JURY TRIAL

Plaintiffs CarMax Auto Superstores, California, LLC, and CarMax Business Services, LLC hereby demand a trial by jury as to all claims triable by jury.

Dated: February 6, 2008

Respectfully submitted,
SCHLICHTER & SHONACK, LLP



By: KURT A. SCHLICHTER
STEVEN C. SHONACK
Attorneys for Plaintiffs CarMax Auto
Superstores, California, LLC, and
CarMax Business Services, LLC

BUSINESS TRACKER RECORD

Completed Analysis Date: 04/27/2007
Database Last Updated: 08-21-2007
Current Date: 10/08/2007
Source: Copyright (c) 2007 by Dun & Bradstreet, Inc.

BUSINESS INFORMATION

Business Name: **SS & KH CORPORATION**
Business Address: 4606 CONVOY ST
SAN DIEGO, CA 92111-2310
County: SAN DIEGO
Country: USA
Region: NORTH AMERICA
Business Phone: 0001-858-279-6862
DUN'S No.: 84-173-6010

BUSINESS DESCRIPTION

Related Name(s): SAN DIEGO AUTO FINDER
SIC Code: 5521 RET USED AUTOMOBILES
Secondary SIC(s): 5012 WHOL AUTOS/MOTOR VEHICLES

EXECUTIVE INFORMATION

Executive Name: SIAMAK SALAMI, PRESIDENT
Executive Name: HOSSEINI SALAMI, CHAIRMAN OF THE BOARD
Executive Name: DOUG FORD, ADMINISTRATOR

END OF DOCUMENT

(C) 2007 Thomson/West. No Claim to Orig. US Gov. Works.

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,941,353

United States Patent and Trademark Office Registered Dec. 12, 1995

**SERVICE MARK
PRINCIPAL REGISTER**

CARMAX

CIRCUIT CITY STORES WEST COAST, INC.
(CALIFORNIA CORPORATION)
SUITE 10-A
680 S. LEMON AVENUE
WALNUT, CA 91789 ; BY ASSIGNMENT, AS-
SIGNMENT, AND MERGER WITH ACME
COMMERCIAL CORPORTION (VIRGINIA
CORPORATION) GLEN ALLEN, VA 23060

FOR: RETAIL OUTLETS FEATURING
AUTOMOBILES AND TRUCKS, IN CLASS 42
(U.S. CL. 101).
FIRST USE 9-22-1993; IN COMMERCE
9-22-1993.

SER. NO. 74-801,650, FILED 6-22-1993.

JAMES A. RAUEN, EXAMINING ATTORNEY



United States Patent and Trademark Office

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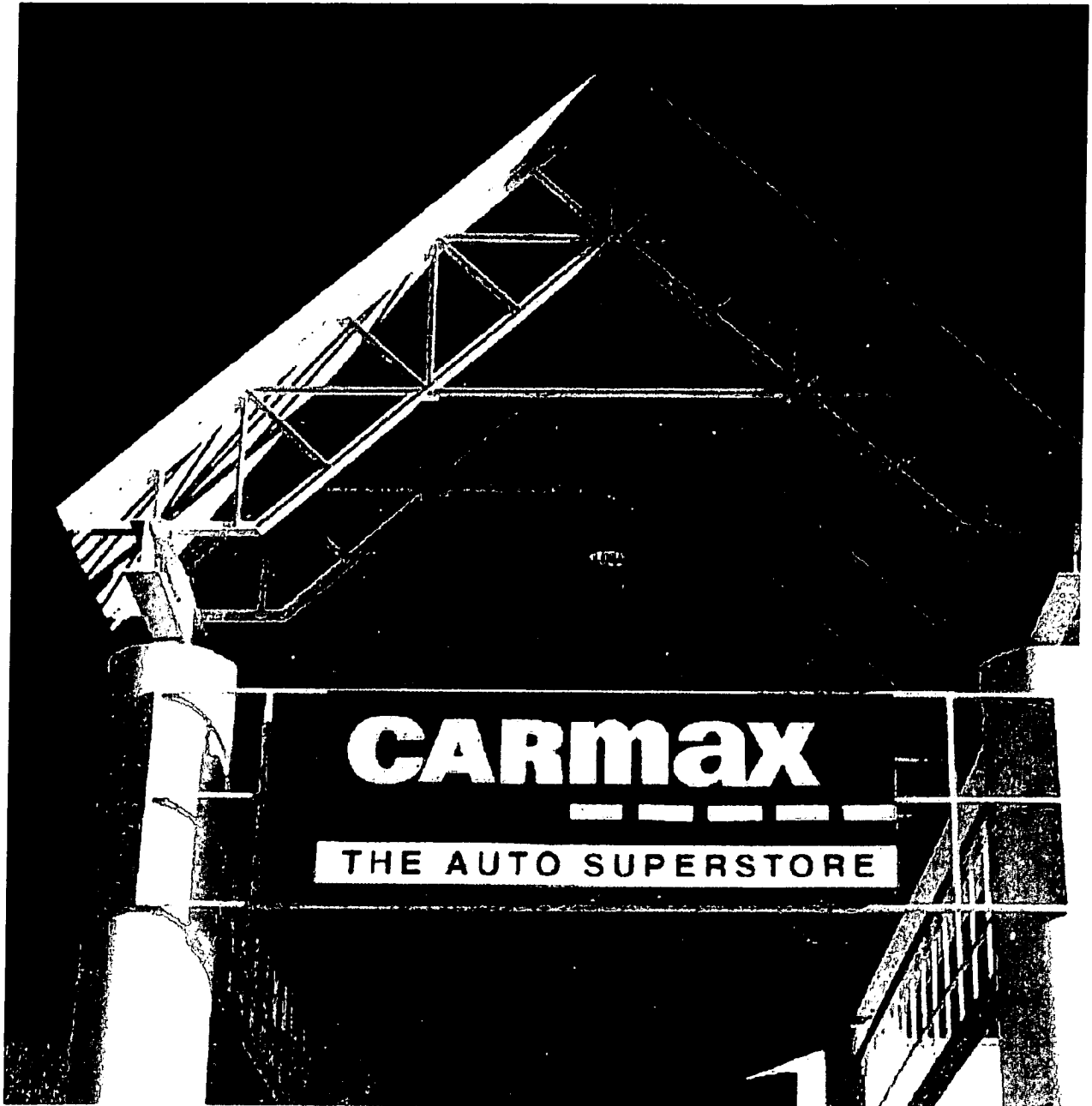
Current Search: S1: (carmax)[BI] and (live)[LD] docs: 30 occ: 62

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78969689		JUST ONE OF THE GAZILLION REASONS TO SHOP AT CARMAX	TARR	LIVE
2	78968826	3310023	CARMAX HEALTH & WELLNESS	TARR	LIVE
3	78630196	3087576	CARMAX CARES	TARR	LIVE
4	78629252	3082848	CARMAX FOUNDATION	TARR	LIVE
5	78629249	3082847	THE CARMAX FOUNDATION	TARR	LIVE
6	78624982	3082766	THE CARMAX FOUNDATION	TARR	LIVE
7	78443816	2981183	CARMAX AUTO FINANCE	TARR	LIVE
8	78423599	2951855	CARMAX CERTIFIED VEHICLES	TARR	LIVE
9	78421907	3044865	THE CARMAX ADVANTAGE	TARR	LIVE
10	78325756	2922919	CARMAX.COM	TARR	LIVE
11	78259083	2881579	CARMAX AUCTIONS PERKS	TARR	LIVE
12	78259081	2881578	CARMAX AUCTIONS PERKS	TARR	LIVE
13	77075119		CARMAX CAR BUYING CENTER	TARR	LIVE
14	77188557		CARMAX CARES	TARR	LIVE
15	75499884	2323178	CARMAX AUCTIONS	TARR	LIVE
16	75380457	2301351	CARMAX CERTIFIED QUALITY INSPECTION	TARR	LIVE
17	75241434	2134379	CARMAX SERVICE CENTER	TARR	LIVE
18	75078562	2092728	CARMAX	TARR	LIVE
19	75078808	2104768	COME TO CARMAX AND DRIVE HOME A BARGAIN	TARR	LIVE

20	74801650	1941353	CARMAX	TARR	LIVE
21	74585543	1959875	CARMAX THE AUTO SUPERSTORE	TARR	LIVE
22	74585542	1963876	CARMAX THE AUTO SUPERSTORE	TARR	LIVE
23	74577384	1954468	CARMAX	TARR	LIVE
24	74577382	2001858	CARMAX	TARR	LIVE
25	74520003	1998608	CARMAX THE AUTO SUPERSTORE	TARR	LIVE
26	74520002	1929336	CARMAX THE AUTO SUPERSTORE	TARR	LIVE
27	74518323	1934822	CARMAX THE AUTO SUPERSTORE	TARR	LIVE
28	74518176	2000241	CARMAX THE AUTO SUPERSTORE	TARR	LIVE
29	74413398	1947856	CARMAX	TARR	LIVE
30	74405483	2032449	CARMAX	TARR	LIVE

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[NEW USER](#)
[STRUCTURED](#)
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 [HELP](#) |
 [PRIVACY POLICY](#)

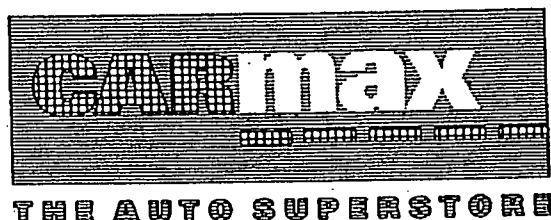


Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 1,959,875
United States Patent and Trademark Office Registered Mar. 5, 1996

SERVICE MARK
PRINCIPAL REGISTER



CIRCUIT CITY STORES WEST COAST, INC.
(CALIFORNIA CORPORATION)
680 SOUTH LEMON AVENUE
WALNUT, CA 91789

FOR: RETAIL OUTLETS FEATURING
AUTOMOBILES AND TRUCKS, IN CLASS 42
(U.S. CLS. 100 AND 101).

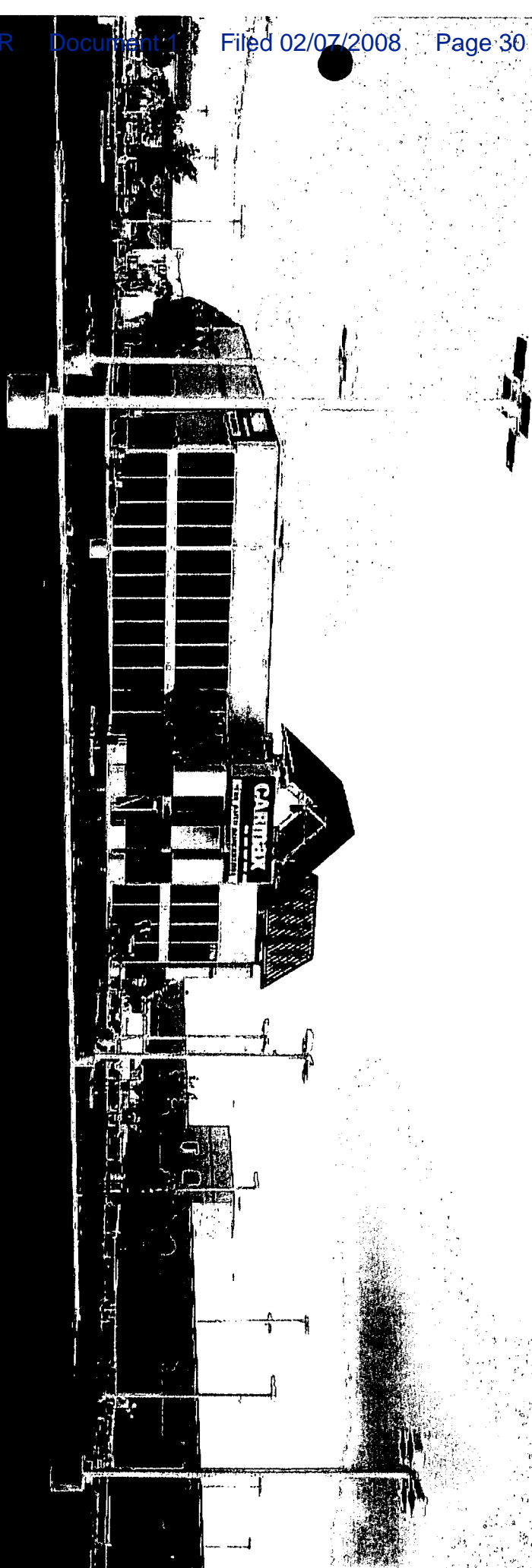
FIRST USE 9-22-1993; IN COMMERCE
9-22-1993.

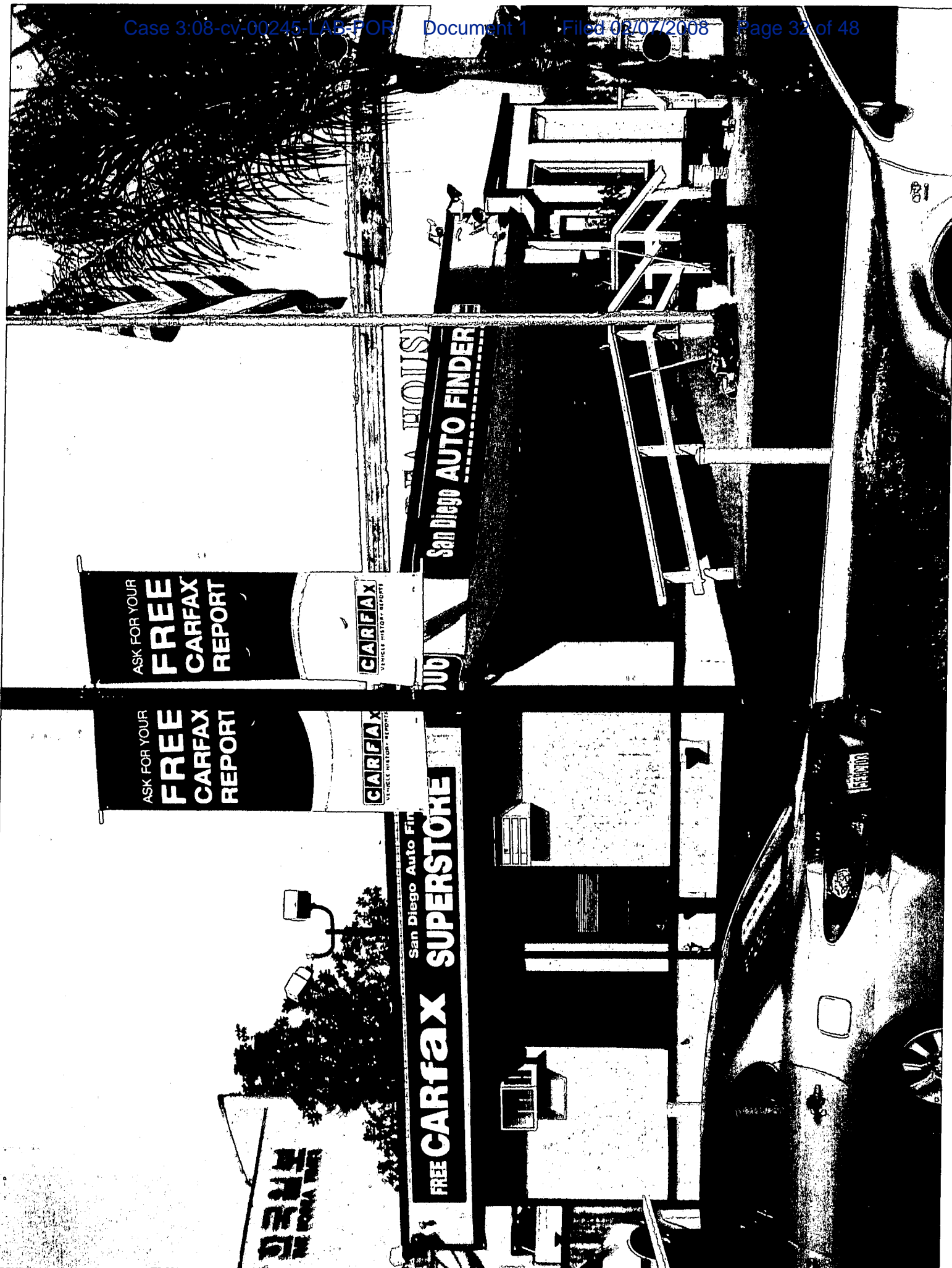
NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "AUTO SUPERSTORE" ,
APART FROM THE MARK AS SHOWN.

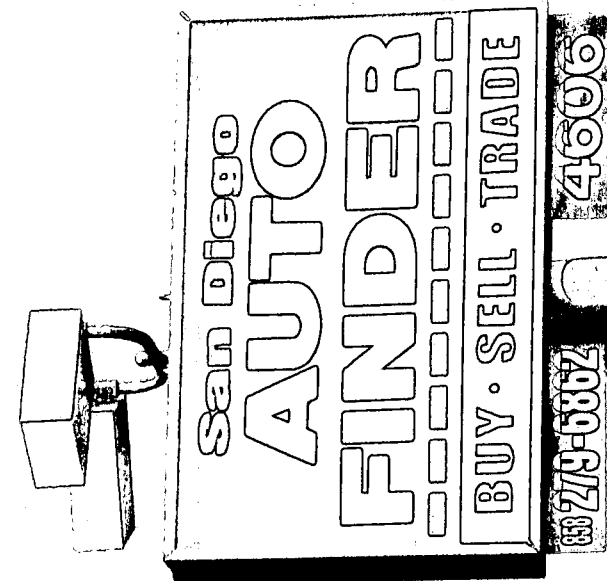
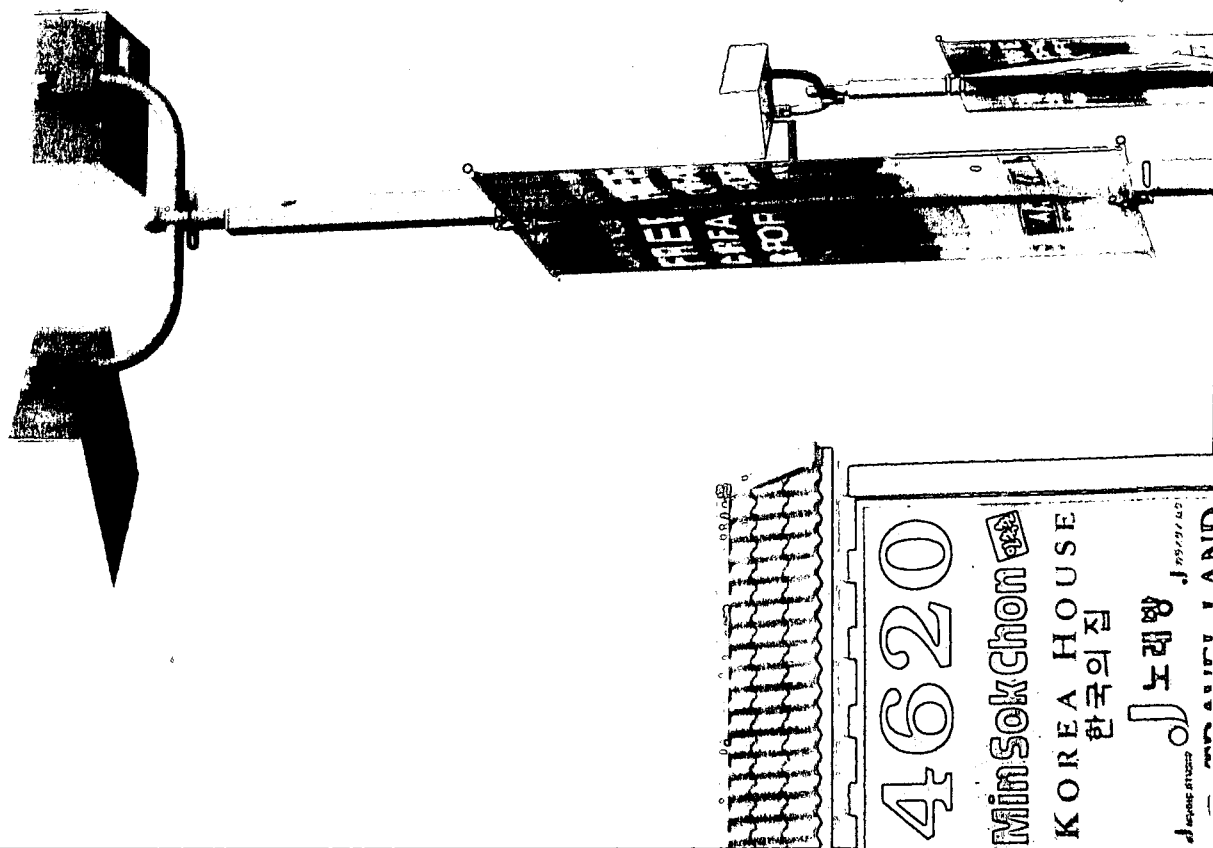
THE MARK IS LINED FOR THE COLORS
BLUE AND YELLOW WHICH ARE CLAIMED
AS FEATURES OF THE MARK.

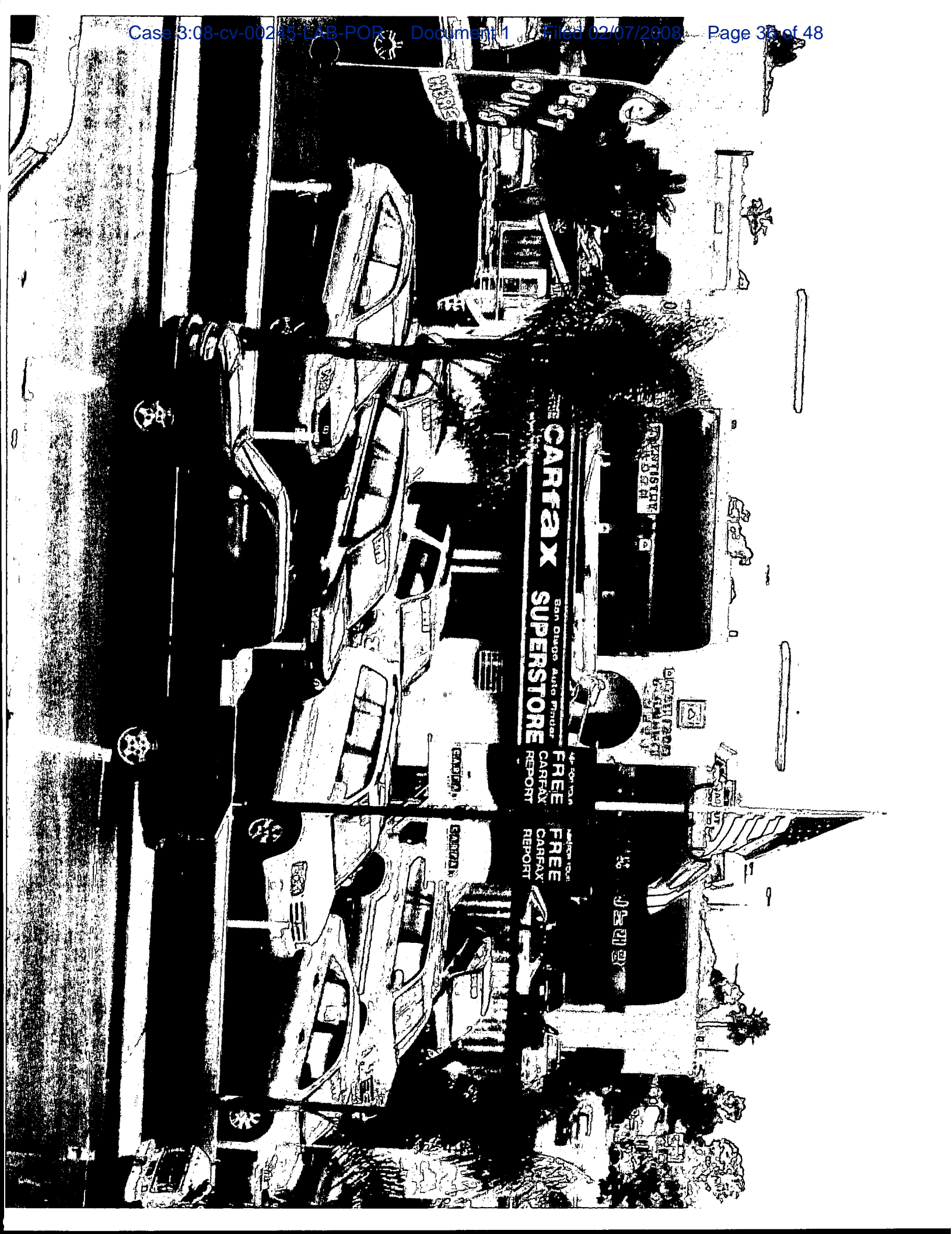
SER. NO. 74-585,543, FILED 10-14-1994.

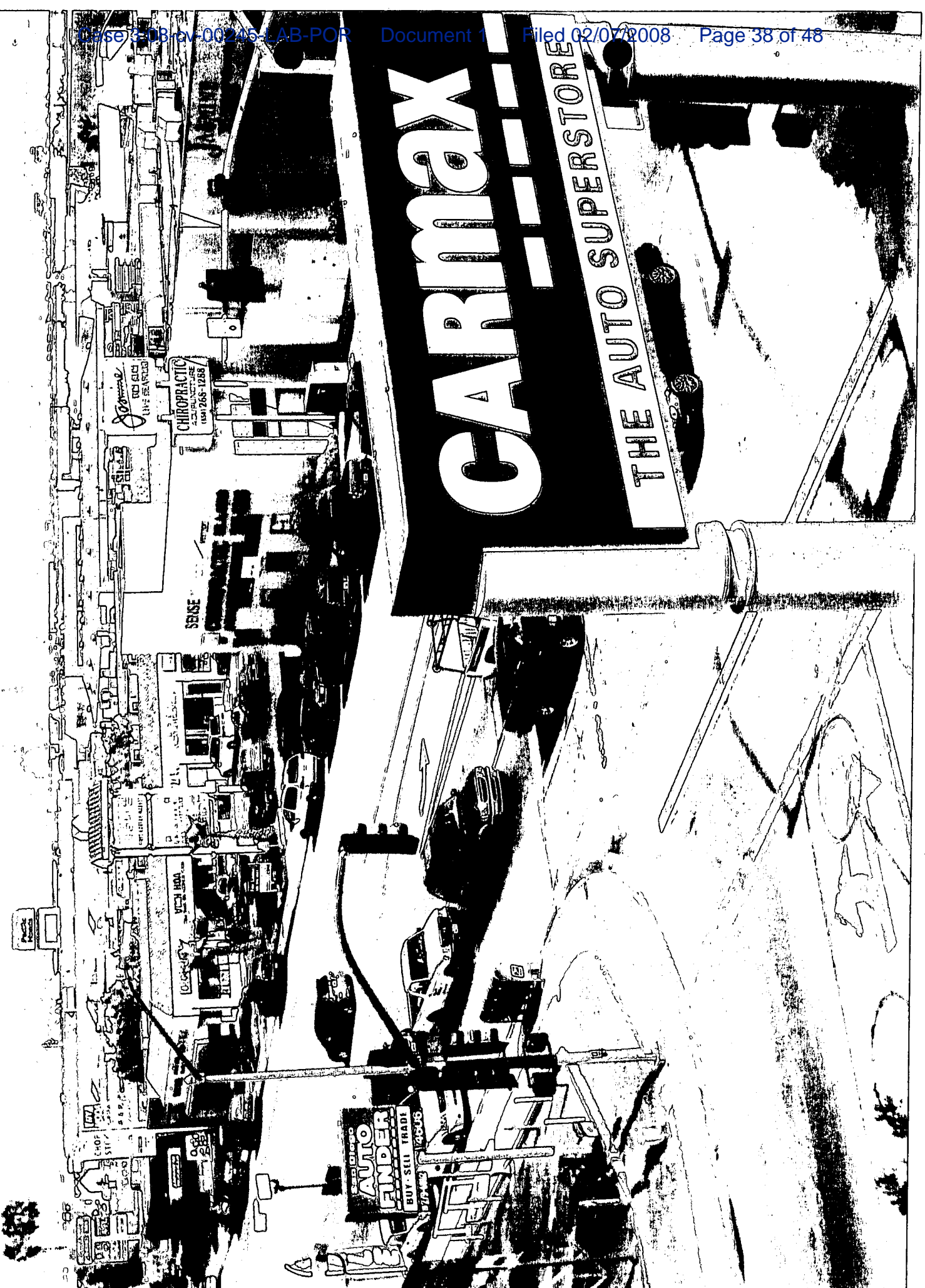
KEVIN ELSE, EXAMINING ATTORNEY





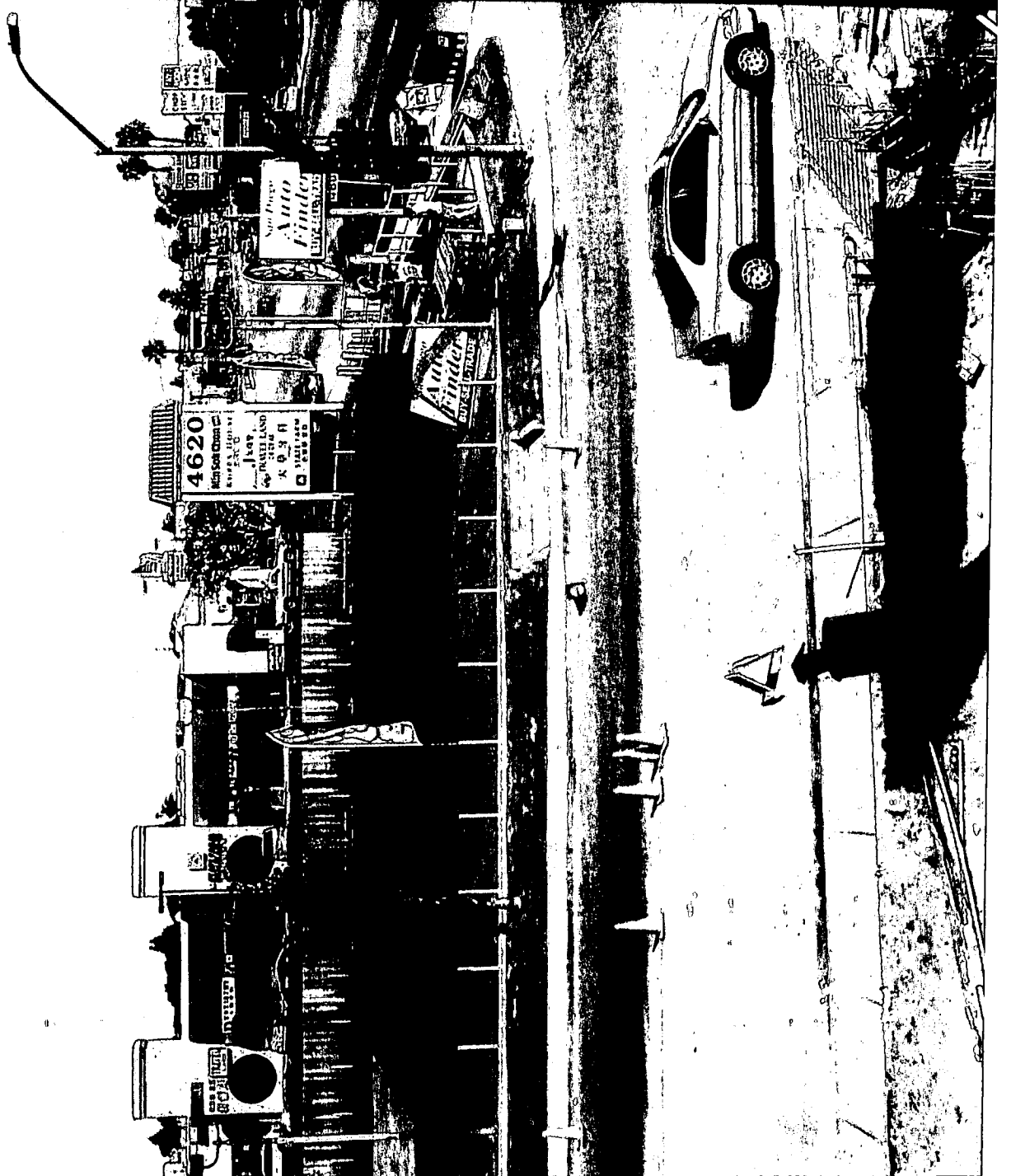
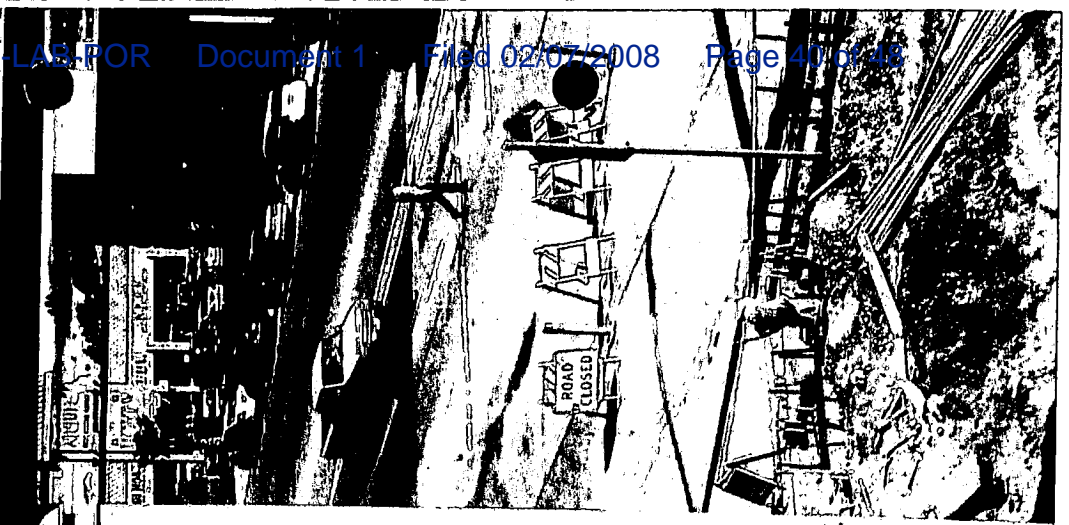






CARNI

THE AUTO SUP







12800 Tuckahoe Creek Parkway • Richmond, VA 23238

October 8, 2007

Via Federal Express

Siamak Salami, President and Registered Agent
SS & KH Corporation
4606 Convoy Street
San Diego, CA 92111

Re: *Infringement of Rights in CarMax Marks*

Dear Mr. Salami:

I serve as counsel to CarMax Auto Superstores Inc. ("CarMax"), a licensed motor vehicle dealer in California. CarMax purchases and sells new and used vehicles and provides auto-related services throughout the United States. It has come to our attention that you serve as Registered Agent and President to a company named SS & KH Corporation, d/b/a San Diego Auto Finder ("Auto Finder"), which operates as an automobile dealership located at 4606 Convoy Street, San Diego, CA 9211. A CarMax store is under construction directly across the street on 7766 Balboa Avenue. The style and color scheme of the Auto Finder logo and signage borrow essential components of the trade dress of CarMax. This letter is sent to demand that you cease this infringing conduct.

CarMax currently operates 84 used car superstores in 38 markets, including nine stores in California. All of CarMax's service marks and trade dress are federally registered with the United States Patent and Trademark Office. CarMax enjoys exclusive rights to the service mark "CARMAX" and numerous variations thereof. Beginning in 1993, CarMax has advertised the various CarMax service marks in television and radio commercials, print advertisements, on the Internet, and in brochures and signs posted at our stores. CarMax has devoted considerable resources to promote the CarMax marks and our company has developed substantial goodwill in the marks.

Auto Finder adopts the blue, yellow and white color scheme of the CarMax trade dress in a fashion similar to that of CarMax including use of the name "Carfax" on the sign with the identical color scheme and markings of the CarMax mark. The name Carfax is one letter different from the name CarMax and the suffix "max" has the identical five broken dash underline as the CarMax mark. This configuration has and is likely to generate a high degree of confusion among reasonable consumers. Moreover, we conclude that your infringement of CarMax's intellectual property rights is willful, and that it demonstrates an intent to enhance your business by deceiving consumers into believing that your company is affiliated with CarMax.

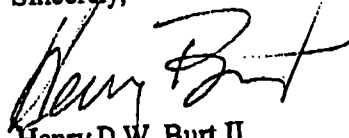
Siamak Salami, President and Registered Agent
SS & KH Corporation
October 8, 2007
Page 2

In light of the foregoing facts, use of our trade dress is impermissible under the law and unacceptable to CarMax. Without prejudice to CarMax's rights to damages and other relief, we hereby demand that your company immediately cease using the blue, yellow and white trade dress similar to that of CarMax.

I request written confirmation that your company's use of the CarMax trade dress has ceased within fifteen (15) business days of your receipt of this letter. In the event this matter must be resolved through litigation, CarMax reserves the right to seek treble damages, as well as attorneys' fees and costs.

We anticipate your prompt cooperation.

Sincerely,



Henry D.W. Burt II
Corporate Counsel

San Diego Auto Finder

4606 Convoy St
San Diego, CA. 92111

Via Federal Express

Oct 11, 2007

Henry D.W Burt II , Corporate Counsel
CARMAX
12800 Tuckahoe Creek Parkway
Richmond, VA. 23238

Re: Infringement of Rights in CarMax Marks

Dear Mr. Burt:

Thank you for your recent letter, it was very informative. We have been located here in the Kearny Mesa area of San Diego for over 20 years; we want nothing but goodwill with our neighbors. We did not mean to infringe on any rights of CarMax and have made a generous effort to remove the "broken dash underline" on our sign connected to the south side of our building. We have used the yellow and blue colors for many years and as CarMax is opening soon across the street from our business we decided to touch up our paint.

The CarFax signs located around our dealership were provided by the CarFax Company. We are participating in a huge CarFax promotion in which we received Signage, window stickers, promotional paperwork, balloons and much more. The CARFAX colors happen to be blue and yellow much like our company's colors. If you would like to contact CARFAX concerning their colors you can reach them by mail at:

5860 Trinity Parkway
Suite 600
Centreville, VA. 20120

Thank you again for your correspondence and we hope to have a healthy relationship with CarMax as a neighbor and competitor for years to come.

Sincerely,



Kenneth J. Jorgensen
General Manager

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147372 - BH

**February 07, 2008
15:53:24**

Civ Fil Non-Pris

USAO #: 08CV0245 CIVIL FILING

Judge.: LARRY A BURNS

Amount.: \$350.00 CK

Check#: BC# 9106

Total-> \$350.00

**FROM: CARMAX V. SS &KH
CIVIL FILING**

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CarMax Auto Superstores, California, LLC, a California limited liability company, and CarMax Business Services, LLC, a Delaware limited

(b) County of Residence of First Listed Plaintiff Richmond City, VA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Steven C. Shonack, Esq., Schlichter & Shonack, LLP, 3601 Aviation Blvd., #2700, Manhattan Beach, CA, 90266

DEFENDANTS

SS & KH Corporation, a California corporation d/b/a Sam's Club
Auto Finder, Siamak Salami, and Hosseini Salami
County of Residence of First Listed Defendant San Diego, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

BY:

DEPUTY

Attorneys (If Known)

08 CV 0245 LAB POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Lanham Act, 15 U.S.C. Sections 1051 et seq.

Brief description of cause:

Defendants have willfully infringed plaintiffs' federally registered trade dress.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/5/08

SIGNATURE OF ATTORNEY OF RECORD

Steven Shonack

FOR OFFICE USE ONLY

RECEIPT #

14772

AMOUNT

\$350

2/7/08 BH

APPLYING IFP

JUDGE

MAG. JUDGE